

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

IN RE GENETICALLY MODIFIED ) 4:06 MD 1811 CDP  
RICE LITIGATION ) ALL CASES

**AGREED ORDER SETTING DEPOSITION PROTOCOL**

As stated in the status conference held on **November 29, 2007**,

**IT IS HEREBY ORDERED** that the parties' motion for entry of a case management order regarding depositions [#450] is granted and the following protocol is adopted in this case:

1. **Recording Depositions by Nonstenographic Means.**

(a) The provisions of Rule 30(b) of the Federal Rules of Civil Procedure shall govern the manner in which the method of recording a deposition is determined. Unless Lead Counsel agree otherwise, all depositions shall be video recorded on videotape, DVD, or other fixed recording media. Parties that do not agree that a video recording shall be made shall not be entitled to a copy of the video unless they purchase a video recording of the deposition from the court reporting agency.

(b) Rules for video recording:

(i) **Video Operator.** The operator(s) of the video recording equipment shall be subject to the provisions of Fed. R. Civ. P. 28(c). At the commencement of the deposition, the operator(s) shall swear or affirm to record the proceedings fairly and accurately.

(ii) **Attendance.** Each witness, attorney, and other person attending the deposition shall be identified on camera at the commencement of the deposition. Thereafter, only the deponent (and the exhibits and demonstrative materials used during the deposition) will be video recorded.

(iii) Standards. The deposition will be conducted in a manner to replicate, to the extent feasible, the presentation of evidence at trial. Unless physically incapacitated, the deponent shall be seated at a table or in a witness box, except when reviewing or presenting materials for which a change of position is needed. To the extent practicable, the deposition will be conducted in a neutral setting, against a solid background, with only such lighting as is required for accurate video recording. Lighting, camera angle, lens setting, and field of view will be changed only as necessary to record accurately the natural body movements of the deponent or to portray exhibits and materials used during the deposition. There will be either one or two cameras. If there is one camera, it will focus on the deponent and/or any exhibit being shown to the deponent. If there are two cameras, one camera will focus on the deponent at all times. The second camera will focus on any exhibit being shown to the deponent. Sound levels will be altered only as necessary to record satisfactorily the voices of counsel and the deponent. Smoking during the deposition is not permitted.

(iv) Interruptions. The video recording shall run continuously throughout the active conduct of the deposition. Video recording will be suspended during all “off the record” discussions.

(v) Index. The video recording operator shall use a counter on the recording equipment and after completion of the deposition shall prepare a log, cross-referenced to counter numbers, that identifies the positions on the fixed recording media at which examination by different counsel begins and ends and any interruption of continuous tape recording occurs, whether for recesses, “off the record” discussions, mechanical failures, or otherwise.

(vi) Filing. The operator shall preserve custody of the original fixed video recording in its original condition until further order of the court. No part of a video recorded deposition shall be released or made available to any member of the public unless authorized by the court.

(vii) Objections. Requests for pretrial rulings on the admissibility of evidence obtained during a video recorded deposition shall be accompanied by appropriate pages of the written transcript. If needed for an informed ruling, a copy of the videotape, DVD, or fixed recording media, along with any equipment required by the Court to view such media, shall be provided to

the Court.

2. Objections

(a) Objections made at deposition must comply with Fed. R. Civ. P. 30(d)(1). All objections except for form and privilege are preserved and may be asserted at the time the deposition testimony is proffered in a later proceeding.

(b) Only counsel for the deponent, the attorney(s) taking the deposition, counsel for other parties to the MDL proceeding, and, if cross-noticed in any state actions, counsel for any such party, may make objections.

(c) If there is an objection, and a deponent is instructed not to answer a particular question, the court reporter will mark the transcript, and will list those objections at the beginning of the transcript.

(d) Any objection at a deposition shall be deemed to have been made on behalf of all parties, except the party whose statement or conduct was the basis of the objection.

3. Telephone and Remote Access Participation. Participation by telephone and remote access will be permitted, although technical difficulties with telephone or remote access will not postpone the deposition.

4. Order and Duration of Questioning. Depositions of fact witnesses shall proceed as follows: Counsel for the party or parties noticing the deposition shall complete direct examination of the deponent, with the party first noticing the deposition having the option of proceeding first. Questioning should ordinarily be by only one attorney for each party. Lead Counsel shall work in good faith to divide time for questioning among noticing parties prior to the commencement of the deposition. Counsel for the deponent may cross-examine, with subsequent re-direct and re-cross examination, as appropriate. After examination by the first questioning attorney(s) is completed, other parties present in person or by telephone may examine the deponent. Examination should be limited to matters not previously covered. The limits on deposition duration set forth in Fed. R. Civ. P. 30(d)(2) apply to all depositions.

5. Who May Be Present. Unless otherwise ordered under Fed. R. Civ. P. 26(c), depositions may be attended by parties, counsel of record, members and employees of their firms, consulting or other experts retained by the parties, and counsel for the deponent. While a deponent is being examined about any document or information that has been designated “confidential” or “highly confidential” by a producing party, persons to whom disclosure is not authorized under the Confidentiality Agreement and Protective Order (D.I. 290) shall be excluded.

6. Notice of Intent to Attend a Deposition. To allow counsel to make arrangements for adequate deposition space, counsel who intend to attend in person a deposition noticed in the above-captioned litigation should advise counsel for the first noticing party at least seven days prior to the deposition. Unnecessary attendance by counsel is discouraged. Counsel for the noticing party shall advise Lead Counsel of who is attending six days prior to the deposition.

7. Cross Noticing by Other Parties. Any cross-noticing of any deposition must be done at least seven days prior to the deposition.

8. Preferred Court Reporting Firms. Absent agreement of Lead Counsel or good cause shown, all depositions shall be transcribed and, if so noticed, video recorded by Golkow, Inc., the court reporting firm upon which Lead Counsel have agreed. Golkow can be reached at (877) 370-3377 and via email at [deps@golkow.com](mailto:deps@golkow.com).

9. Conferences with Deponent. Private conferences between deponents and their counsel are improper while a question is pending except for the determining whether a privilege or claim of confidentiality should be asserted.

10. Marking Exhibits. Counsel shall make reasonable efforts to assign a unique exhibit identifier to each exhibit which counsel shall make a reasonable effort to use every time that exhibit is used in any deposition. Lead Counsel shall coordinate with the selected reporting firm to facilitate the assignment of unique identifiers. Lead counsel shall cooperate in the maintaining of a Master Exhibit List that contains the unique exhibit identifier and the Bates numbers of the document.

11. Documents. Counsel shall make reasonable efforts to provide copies of all documents used as exhibits to one counsel for each party attending the deposition.

12. Protective Order. A copy of the Protective Order shall be provided to the deponent before the deposition commences if the deponent is to produce or may be asked about documents that may contain confidential information.

13. Review and Signature by Deponent. Fed. R. Civ. P. 30(e) governs a deponent's rights and obligations with respect to the review and signature of the transcript of his/her/its deposition.

14. Cooperation. Counsel are expected to cooperate with, and be courteous to, each other and deponents.

15. Disputes During Depositions. Disputes between the parties should be addressed to this Court rather than the District Court in which the deposition is being conducted. Disputes arising during depositions that cannot be resolved by agreement and that, if not immediately resolved, will significantly disrupt the discovery schedule or require rescheduling of the deposition, or might result in the need to conduct a supplemental deposition, shall be presented to the Court by telephone. In the event that the Court is not available, the deposition shall continue with full reservation of the rights of the interrogation for prompt ruling. None of the provisions of this section shall deny counsel the right to suspend a deposition pursuant to Fed. R. Civ. P. 30(d)(4), file an appropriate motion with the Court at the conclusion of the deposition and appear personally before the Court.

16. Scheduling of Depositions. Lead Counsel will jointly coordinate the scheduling of all depositions. Lead Counsel will meet and confer on the order and scheduling of all depositions and attempt to schedule depositions in an orderly manner that will facilitate the progress of the litigation and minimize, to the extent possible, the burdens on parties and witnesses. Lead Counsel will periodically publish, by filing on the E.D. Mo. ECF system, updated lists stating the names of deponents and the proposed dates for their depositions. Counsel for parties who seek depositions of parties or third party witnesses shall notify Lead Counsel of the identity of the deponent. Lead Counsel will meet and confer in an attempt to schedule the requested depositions consistent with the orderly and efficient

administration of this litigation. **Lead Counsel shall electronically file all notices of deposition on the E.D. Mo. ECF system.** In order to provide other counsel the opportunity to attend and to provide notice as required in paragraph 6, above, no deposition, absent extraordinary circumstances, shall be scheduled to occur less than ten working days after the date the notice is filed. The notice shall include a dial-in number for counsel who wish to attend telephonically and the e-mail address of the court reporter or designated contact at the court reporting agency who is stenographically recording the deposition so that counsel in the MDL litigation may contact that reporter to secure transcripts and exhibits in the manner specified in paragraph 18, below. The foregoing provisions are subject to CMO 4.

Scheduling should take into account (a) the availability of documents from among those produced by the parties and third parties, (b) the objective of avoiding the need to subject any person to repeated depositions, (c) the need to preserve relevant testimony, and (d) the need to obtain discovery of relevant facts. As a general rule, no witness should be deposed more than once in this litigation. A party seeking to take a second deposition of a witness shall provide the opposing party and counsel for the deponent (or the deponent himself/herself, if the deponent is not represented) its basis for an exception and a listing of the subjects for which it seeks to depose the witness. Second depositions shall be permitted only upon consent of the parties and the deponent or an order of this Court issued for good cause shown.

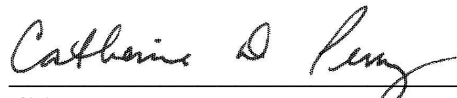
No more than two depositions shall be scheduled on the same day and, absent consent from the law firm, no more than one deponent represented by the same law firm shall be scheduled for the same day.

Once a deposition has been scheduled, it shall not be taken off the calendar, rescheduled, or relocated less than seven days in advance of the date it is scheduled to occur except by agreement between the noticing parties and the attorney representing the deponent.

17. **Cross Noticing With State Actions.** All depositions in this litigation may be cross noticed in any related action pending in state court, and may be used in any case in these MDL proceedings, and, if allowed by the applicable state law, in any related state court proceedings.

18. Location. The location of depositions should be as consistent as possible within each city so that any videotape, videoconferencing, or other equipment can be left in place.

19. Transcripts and Exhibits. All deposition transcripts and exhibits shall be available to counsel for any party to the MDL litigation, at that party's cost. Lead Counsel have selected a preferred court reporting firm and will work with that court reporting firm to ensure a process for making transcripts and exhibits available to any party to the MDL litigation. If a different court reporting service is used, counsel noticing the deposition shall make reasonable efforts to ensure (a) that the court reporters preparing the transcripts make the transcript available in e-transcript format, ascii, and by paper copy, as requested by counsel for any party, (b) the exhibits be produced by the court reporter to requesting counsel in .pdf or other agreed format, and (c) that all requests for transcripts shall be made to the court reporter by e-mail, with copy of the e-mail to Lead Counsel for plaintiffs and defendants. In order to prevent unauthorized release of any deposition transcript, Lead Counsel for plaintiffs and defendants shall provide each court reporter with a list of all counsel of record in the MDL litigation so that the court reporter may verify that the individual requesting the transcript is an authorized recipient.

  
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CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE

Dated this 3rd day of December, 2007.